

SEP 27 2004

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**Via email to [bmoo461@ecy.wa.gov](mailto:bmoo461@ecy.wa.gov) and U.S. Mail**

Industrial Stormwater General Permit  
Washington State Department of Ecology  
P.O. Box 47600  
Olympia, WA 98504-7600

Attn: Bill Moore

Re: Comments on proposed modifications to The Industrial Stormwater General Permit

Dear Bill:

These comments on the proposed modifications to The Industrial Stormwater General Permit ("ISGP") are submitted on behalf of Puget Soundkeeper Alliance, Waste Action Project, Washington Public Employees for Environmental Responsibility, ReSources for Sustainable Communities, Citizens for a Healthy Bay, and Washington Environmental Balance, Inc., the environmentalist petitioners in the appeals of the 2000 and 2002 ISGP versions. Thank you for your perseverance and hard work on the development of stormwater regulation in Washington State.

① Although it remains far from perfect, the ISGP with its proposed modification represents enormous progress in the regulation of stormwater pollution and is an order of magnitude better than the 2000 version.

② Although it is much improved, the proposed ISGP continues to be seriously deficient in several respects. These include the failure to require discharge sampling and analysis adequate to determine compliance with water quality in many instances, the related Condition S9.B.3.c. inadequate trigger for implementation of treatment BMPs (which constitutes a failure to require AKART), and the lack of numeric effluent limitations. However, these comments will focus on those sections of the ISGP to which modifications are proposed.

② Before comments on the conditions proposed for modification, the substantial concern of the environmental community about Ecology's ability to adequately implement and enforce the ISGP must be noted and explained. In the course of the development of the permit, the permittees succeeded in their quest for flexibility and as a result the permit has numerous triggers and if-then situations. We are concerned that the permit will be virtually impossible to administer and enforce without an adequate data management system, and that Ecology has no such system. For example, while DMRs submitted by ISGP permittees are all maintained at Ecology headquarters in Olympia, other permittee files are maintained

at Ecology's regional offices, where inspection staff is based. We do not see how Ecology is going to keep track of which permittees are where with respect to the permit's adaptive management and other provisions. Ecology must make it a priority to develop and maintain an appropriate support and information management structure for the permit.

#### Condition By Condition Comments

③ S3.C.2.b. – Actual sampling and analysis should be required to characterize approved non-stormwater discharges. Without this, it is simply not possible to determine whether these discharges may cause or contribute to water quality problems.

④ S3.C.2.d. – This provision does not clearly require implementation of AKART. It only requires implementation of "available and reasonable source control best management practices to reduce or eliminate the discharge." It does not contemplate Ecology review of these, require that "all" such practices be used, and is limited to source control BMPs (to the exclusion of treatment). Ecology here abdicates its obligation to determine and require AKART for these discharges.

⑤ S3.E. – The deletion of the numeric effluent limitations for discharges of pollutants of concern to impaired waterbodies appears to constitute backsliding impermissible under the Clean Water Act.

⑥ – In the third paragraph of this section, "applicable TMDLs or TMDL determinations" are defined with reference to TMDLs that have been completed by the issuance date of the permit, presumably so that permittees are not subject to TMDL restrictions that follow the lapse of the permit appeal period. This reference should be to the permit modification date. Permittees that may be aggrieved by this requirement to comply with TMDLs that have been completed by the permit modification date will have the opportunity to appeal this modified permit requirement.

⑦ S4. – The proposed modified ISGP fails to include a condition requiring sampling of the first fall storm event as directed by the PCHB in its Findings Of Fact, Conclusions Of Law And Order in PCHB Nos. 02-162, -163, and -164.

⑧ – The proposed modified ISGP fails to include a condition requiring sampling in the receiving water when a mixing zone is allowed as directed by the PCHB in its Findings Of Fact, Conclusions Of Law And Order in PCHB Nos. 02-162, -163, and -164.

⑨ – The proposed modified ISGP fails to establish a lower benchmark for copper as directed by the PCHB in its Findings Of Fact, Conclusions Of Law And Order in PCHB Nos. 02-162, -163, and -164.

S4.A. – The changes to the sampling requirements appear to be a good response to information Ecology has received concerning the relatively low frequency of first

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flush qualifying sampling events at some facilities. We are pleased that the preference for samples meeting first flush criteria remains an enforceable preference. To clarify this further, "should" in subparagraphs 1, 3, and 4 should be changed back to "must", as the addition of the clause "if possible" in these subparagraphs makes adequately clear the qualification on the sampling criteria.

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S4.C. – This section refers to both "benchmark values", before they otherwise appear or are defined in the permit, and "action levels" in a potentially confusing way.

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- The provision in the first paragraph of this condition allowing averaging of monitoring results collected during a quarter invites gamesmanship by permittees seeking to avoid having to take action as the condition requires. A permittee with one quarterly sample above an action level may decide to take samples early enough in the next quarter to get the results in time to allow additional sampling during that quarter if the first sample yields a high result. The action levels here are so high as to make additional opportunities for avoiding action unwarranted. Adaptive management under this section should be triggered when any sample during a quarter exceeds trigger levels and opportunities for gamesmanship should not be provided.

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- Two weeks after receipt of sample results showing an exceedence of benchmark values for a facility inspection for a level one response is too long. The exceedence of a benchmark value indicates a potentially significant water quality problem that should be addressed by the permittee as soon as possible. Waiting for as long as two weeks after receipt of troubling sample results may allow continued poor quality discharges due to BMP failures to continue during this period, and may also make it impossible to determine the cause of the elevated results as site conditions change over time. This condition should require an immediate inspection, to be completed within no more than two business days of receipt of sample results. There is no legitimate reason why more time should be allowed. Follow up inspections by permittees' stormwater consultants can follow immediate initial permittee inspections if such consultants are not immediately available to the permittee. This is supposed to be the adaptive management section of the permit and it should be written to require prompt adaptive management responses, not to allow so much delay as to unnecessarily postpone adaptive management responses or make them impossible.

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- Action levels are too lenient, particularly those for metals and pH.

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- It is not clear how failures to collect samples are to be considered when determining whether criteria for a level two ("two out of the previous four quarterly sampling results collected after (effective date of permit modification) are above the action levels ...") are satisfied. The condition should clarify that failure to collect a sample due to insufficient precipitation should be excluded from this determination.

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- The criteria for a level three response should be changed to insert the word "any" before "four quarterly samples collected after (effective date of permit modification) are above the action levels". This would clarify the apparent intent

that the four quarterly samples need not be consecutive to trigger the required actions.

17 - The last sentence of the level three response box provides: "The stormwater treatment waiver request must be reviewed and approved by Ecology as either a modification of permit coverage in accordance with condition S1.D., or through the issuance of an administrative order before the stormwater treatment waiver becomes effective." The waiver should be allowed by modification of permit coverage only and not through an administrative order. To allow it through administrative order would violate the regulations on general permits as well as a de facto major permit modification outside of permit modification procedures.

18 S4.D.1. - The new third paragraph of this section is a welcome addition that brings the ISGP into compliance with applicable federal regulations.

19 S4.E. - Modification of stormwater sampling requirements for permittees that have received an "extreme hardship fee reduction" should be only through permit modification and not through administrative order.

20 S4.G. - Changing the start date for additional monitoring for discharges to 303(d)-listed waters from the second quarter of 2003 to January 2005 would relieve permittees of obligations that they were to already have performed and is inappropriate in this permit modification. In addition, as it makes the permit less stringent and constitutes impermissible backsliding.

21 S4.G.1.a. - "Eight consecutive samples" should be clarified as "eight consecutive monthly samples" to avoid potential misinterpretation and gamesmanship.

22 S4.G.1.b. - References should be to monthly, rather than quarterly, samples.

23 S4.G.2. - Sampling for discharges subject to TMDLs should be monthly rather than quarterly.

24 S4.H. - See comment above (for S4.G.) concerning change of start date for additional monitoring requirements for 303(d) listings.

25 S5.A. - The last paragraph should reference results above action levels as well as above benchmarks.

26 S5.F.3. - There is an opportunity created here for spurious claims of confidential business information and/or security concerns. This condition should clearly make it a permit violation to advance a baseless claim of confidential business information and/or security. The referenced S13. dispute resolution provision is without substance.

27 S9. - The sentence in the second paragraph of S9. concerning presumption ("Unless there is site-specific information to indicate otherwise, permittees which choose the presumptive approach are presumed to be in compliance with standards as set forth in S7.") is unnecessary and potentially confusing as the appropriate

presumption language is in S7 and is more restrictive than this. It is important that this language be removed to ensure that any such presumption provided in this permit is consistent with that required by ESSB 6415.

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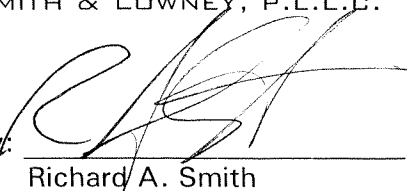
S9.B.3. – The word “include” is missing from the first line of this condition.

Thank you for your attention to these comments.

Very truly yours,

SMITH & LOWNEY, P.L.L.C.

By:

  
Richard A. Smith